

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MEDITERRANEAN SHIPPING
COMPANY S.A.,

Plaintiff,

MEMORANDUM OPINION AND
ORDER

-against-

06 Civ. 3391 (MGC)

NINGBO TOPTRADE IMP. EXP. CO. LTD.,
TOPTRADE RECYCLING (USA) INC., AND NEWDEH
LEE,

Defendants.

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APPEARANCES:

BROWN GAVALAS & FROMM LLP
Attorneys for Plaintiff
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New York, New York 10017

By: Peter Skoufalos, Esq.

HILL RIVKINS & HAYDEN LLP
Attorneys for Defendants
45 Broadway
New York, New York 10006

By: Keith B. Dalen, Esq.
Andrew R. Brown, Esq.

Cedarbaum, J.

In May 2006, Mediterranean Shipping Company S.A., ("MSC") brought this action against Ningbo Toptrade Import Export Co. Ltd., ("Ningbo") Toptrade Recycling (USA), Inc., and Newdeh Lee for issuance of a Process of Maritime Attachment and Garnishment pursuant to Rule B of the Supplemental Rules for Admiralty and Maritime Claims and Asset Forfeiture Actions. The attachment was issued, and the Bank of New York restrained an Electronic Fund Transfer of \$500,000 originated by Ningbo on July 12, 2007.

MSC filed a duplicate action against the very same defendants in the Central District of California. Judge Feess of the Central District of California dismissed that complaint sua sponte for lack of subject matter jurisdiction. He found that MSC's injury had occurred on land and thus could not support admiralty jurisdiction. Mediterranean Shipping Co. v. Ningbo Toptrade Imp. Ex. Co, et al., No. CV 07-0733 (GAF) (C.D. Cal. June 26, 2007). MSC filed a notice of appeal to the Ninth Circuit Court of Appeals on August 2, 2007, and the parties argued the appeal before the Ninth Circuit on February 2, 2009.

On April 21, 2008, defendants appeared though counsel in this action and moved to dismiss for lack of subject matter jurisdiction. Neither party has submitted authority on the res judicata effect of the proceedings in their identical case now

awaiting decision by the Ninth Circuit. Accordingly, defendants' motion to dismiss is denied as premature.

SO ORDERED.

Date: New York, New York
March 27, 2009

S/_____
MIRIAM GOLDMAN CEDARBAUM
United States District Judge